

EXHIBIT 40

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

COPART INC.,

Plaintiff,

vs.

No. C 07 02684 CW

CRUM & FORSTER INDEMNITY
COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, and DOES
1-10,

Defendants.

CERTIFIED
COPY

AND RELATED COUNTERCLAIMS.

VIDEOTAPED DEPOSITION OF SIMON ROTE

San Francisco, California

Thursday, May 8, 2008

Reported by:

DARCY J. BROKAW

RPR, CRR, CLR, CSR No. 12584

Job No. 86978

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 COPART INC.,

5 Plaintiff,

6 vs.

No. C 07 02684 CW

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8 COMPANY, UNITED STATES FIRE
9 INSURANCE COMPANY, and DOES
10 1-10,

11 Defendants.

12 AND RELATED COUNTERCLAIMS.

13
14
15 VIDEOTAPED DEPOSITION OF SIMON ROTE,
16 taken on behalf of Defendant United States Fire Insurance
17 Company, at Bullivant Houser Bailey PC, 601 California
18 Street, Suite 1800, San Francisco, California, beginning at
19 9:02 a.m. and ending at 3:57 p.m., on Thursday, May 8, 2008,
20 before me, DARCY J. BROKAW, RPR, CRR, CLR, CSR No. 12584.
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1 APPEARANCES

2
3 For the Plaintiff, Copart, Inc.:

4 PILLSBURY & LEVINSON, LLP
5 BY: ERIK L. LARSON, ESQ.
6 600 Montgomery Street, 31st Floor
7 San Francisco, California 94111
8 415-433-8000
9 rlarson@pillsburylevinson.com

10 For the Defendant United States Fire Insurance Company:

11 BULLIVANT HOUSER BAILEY PC
12 BY: SAMUEL H. RUBY, ESQ.
13 601 California Street, Suite 1800
14 San Francisco, California 94108
15 415-352-2700
16 samuel.ruby@bullivant.com

17 ALSO PRESENT: Ray Tyler, Videographer
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1 San Francisco, California, Thursday, May 8, 2008

2 9:02 a.m. - 3:57 p.m.

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4 SIMON ROTE,

5 having been first duly sworn, was examined and testified as
6 follows:

7 THE VIDEOGRAPHER: Good morning.

8 Here begins Media No. 1 of the deposition
9 of Simon Rote in the matter of Copart, Incorporated
09:0210 versus Crum & Forster Indemnity Company, et al., in
11 the U.S. District Court, Northern District of
12 California, Oakland Division. The Case Number is
13 C 07 02684 CW.

14 Today's date is May 8th, 2008. The
09:0215 current time is 9:02 a.m. This deposition is taking
16 place at Bullivant Houser Bailey, at 601 California
17 Street, San Francisco, California, and is being
18 taken on behalf of the defendants.

19 The videographer is Ray Tyler, appearing
09:0220 on behalf of Sarnoff Court Reporters and Legal
21 Technologies. The court reporter is Darcy Brokaw,
22 also representing Sarnoff Court Reporters.

23 All counsel, parties and the deponent,
24 please take notice that as part of the videotaping
09:0225 of this deposition, very high-quality microphones

09:18 1 not going to change the date. We don't change the
2 dates on there. So it could have been a typo,
3 potentially. Because you have to understand, all
4 these items are manually keyed into our accounting
09:18 5 records, our system.

6 MR. LARSON: I'd rather you not speculate
7 as to what it might be, because we're not looking at
8 the 2003.

9 THE WITNESS: Okay. Sorry.

09:18 10 BY MR. RUBY:

11 Q But what the "as of" date should be is
12 that that should be a snapshot date of the assets
13 actually owned as of that date and not any later
14 dates?

09:18 15 A Correct, yes.

16 Q Would the "as of" date also indicate the
17 accumulated amortization as of that date?

18 A In the particular accounts, yes. If you
19 go to the accumulated depreciation accounts, yes.

09:19 20 Q All right. Now, this master asset list
21 appears to be organized by location; is that
22 correct?

23 A Yes.

24 Q And Copart's locations have a number
09:19 25 assigned to them?

09:19 1 A Uh-huh.

2 Q And that number is sometimes referred to
3 as the yard number?

4 A Correct.

09:19 5 Q Is there any particular significance to
6 the term "yard"? Or is that just a term that Copart
7 uses to describe its locations where it operates?

8 A We typically call it a facility. In a lot
9 of the reports, when we set them up, we just call
09:19 10 them yard numbers. So you can call it the yard
11 number, a facility number.

12 Q Some of the facilities that are assigned a
13 yard number truly have a yard there; is that right?

14 A If there is a yard number, there should be
09:20 15 a location that went with it, yes.

16 Q What I mean by "yard" is in common
17 parlance, that's sort of an open space. It may be
18 enclosed, but there's some open space there where
19 your inventory is stored?

09:20 20 A Correct.

21 Q And some of these yards are not -- or some
22 of these facilities are not just yards but there are
23 also buildings there, correct?

24 A Yes.

09:20 25 Q Have there been times when Copart has

09:20 1 owned a facility which is assigned a yard number,
2 and there are no buildings there; it's just a yard?

3 A Yes.

4 Q So the fact that Copart assigns a yard
09:20 5 number to a location doesn't necessarily mean
6 there's a building there, right?

7 A Correct.

8 Q Do Copart's yards usually have street
9 addresses associated with them?

09:21 10 A Typically, yes.

11 Q Has Copart ever owned or operated a yard
12 that did not have an associated street address?

13 A I'm not positive on that one.

14 Q Has Copart ever owned or operated a yard
09:21 15 which had no buildings on it but still had a street
16 address associated with it?

17 A How does that differ from the first
18 question?

19 Q Maybe it doesn't. My question is -- I
09:22 20 think we've established that at times, Copart has
21 owned facilities, which it calls yards --

22 A Right.

23 Q -- which are truly just yards; there's no
24 buildings there.

09:22 25 A Okay.

09:22 1 Q Okay. And my question now is: For one or
2 more of those pure yards, is there sometimes a
3 street address associated with the yard even though
4 there's no building there?

09:22 5 A Yes.

6 Can I clarify something? With respect to
7 the yard numbers, I mean obviously from the
8 mechanics' standpoint, if we acquire an asset, I
9 need a method to keep track of that particular
09:22 10 location, I guess, or yard number. So we assign --
11 if it's a piece of property, we'll typically assign
12 it a yard number.

13 Q Okay. And just to follow up on what my
14 last question was, so there are times -- or let me
09:23 15 start over.

16 Just because there's a street address
17 associated with one of your yard numbers doesn't
18 necessarily mean there's a building there, right?

19 A Correct.

09:23 20 Q It could just be literally just a yard?

21 MR. LARSON: Still vague and ambiguous as
22 to "yard."

23 THE WITNESS: How are you defining a yard?
24 I'm just trying to be clear there.

25

01:05 1 sequence, and for all of those yards, there is some
2 number in those columns for building, contents,
3 equipment, et cetera.

4 Do you see that?

01:05 5 A I see it.

6 Q Okay. Now, is that because at the time of
7 this statement, all those yards were operational?
8 Or were there some yards that were not operational
9 but the practice at this time was to still report
01:05 10 values?

11 A In looking at this particular schedule, as
12 early as 10/1/03, I do see where we have inventory
13 values in all the locations, as well as values in
14 all the other columns. So my assumption is that
01:06 15 they were operational. I would have to go back and
16 confirm that based upon our sales results.

17 Q But auctioning cars or car parts is your
18 business, right?

19 A We don't auction the parts. We auction
01:06 20 the whole car.

21 Q The whole car, okay.

22 All right. So when we come now back to
23 2004, where we have a statement that now has some of
24 the yards listed, newer yards, but with blanks in
01:06 25 some of the columns, did somebody -- anybody -- tell

01:06 1 you up through this date, if the yard's not
2 operational, don't put -- don't fill in those
3 columns?

4 A No.

01:07 5 Q Okay. So no one at Marsh said don't do
6 it?

7 A No.

8 Q All right. And in your time working under
9 the CFO, from '97 to '03 --

01:07 10 A Right.

11 Q -- had you been exposed to some practice
12 whereby if the yard wasn't operational, nothing
13 would have been -- those values would not be
14 recorded?

01:07 15 A Like I said, I don't have a lot of the
16 history on going back to, you know, '02 and prior.
17 I mean, I just don't recall it.

18 Q Okay.

19 A But I would assume, once again, our
01:07 20 practice would have been until the project was
21 completed, not to assign the value to it, typically.

22 Q Okay. But before you became the acting
23 CFO in '03 --

24 A Right.

01:07 25 Q -- you were still involved from time to

02:36 1 A Correct. But once again, when you're
2 dealing with spreadsheets, as we noted earlier, you
3 had the 8/8 one, the same date is on it, a different
4 date on it. So when you're updating spreadsheets,
02:36 5 it's easy to overlook an item there.

6 Q Okay. Right. And I'm not saying it's a
7 big deal that the date wasn't changed. But just for
8 clarification, I think we've established that what
9 you sent Ms. McIntyre on November 1st, 2005, it
02:37 10 wasn't just the same statement she had sent you back
11 in November; you had made some changes to it and you
12 were sending it back to her, correct?

13 A Yes.

14 Q Okay.

02:37 15 All right. Now, looking at the statement
16 that's part of this exhibit, if we go to Yard 105,
17 we will see some values in columns that were
18 previously blank?

19 A Correct.

02:37 20 Q So I want to ask you about those values.

21 First of all, in the Building and
22 Improvements column, we now see a value of 750,000,
23 right?

24 A Yes.

02:37 25 Q Is that a number that you supplied?

02:37 1 A I believe I did.

2 Q How did you determine that number?

3 A That's historically what it would cost for
4 us to build a large metal building.

02:38 5 Q We've talked about Yard 105, the previous
6 building there having been undergoing some
7 renovations.

8 A Mm-hmm.

9 Q When you determined the number to supply
02:38 10 in this statement, did you take into account the
11 renovations, or were you trying to just estimate the
12 cost of replacing the original building there?

13 A I tried to estimate the cost to put our
14 standard metal building on there.

02:38 15 Q Is there some degree of uniformity in the
16 design of buildings that Copart puts up at its
17 locations?

18 A We try to basically follow a very
19 cookie-cutter approach. Willis likes to call it the
02:39 20 McDonald's approach. So we had a standard large --
21 standard large building and a small building.

22 So with respect to the actual building,
23 the buildings, yes, we tried to be very consistent
24 with respect to the color scheme, the layouts of
02:39 25 them, the counter colors, cubicle colors. That way,

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:


3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review of
14 the transcript [☒] was [☐] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20
21 Dated: MAY 20 2008

22
23 
24 DARCY J. BROKAW
25 CSR No. 12584